IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 558 OF 2006
IN
SUMMARY SUIT NO. 3209 OF 1986

M/s. Vijay Soap Products] .. Appellant (Ori.Defendants)

Versus

J.K. Oil Agency] .. Respondents (Ori.Plaintiffs)

Mr. Arif Y. Bookwala, senior counsel with Mr. Kishore Dalal i/b M/s. Kishore Dalal & Co. for the appellant.

Mr. Kamal Khata i/b Mr. Rajendra Sorankar for the respondent.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 09TH OCTOBER, 2006

ORAL ORDER : [Per R.M. Lodha, J.]

. The original defendants are in Appeal against the judgment and decree dated 16th June, 2006 passed against them under Order VIII, Rule 10 of the Code of Civil Procedure.

2. We shall refer to the parties as parties in the suit.

3. A Summary Suit under Order XXXVII, Rule 2 of the Code of Civil Procedure, 1908 came to be filed by

the plaintiffs (respondents herein) against the defendants (appellants herein). In the said Suit, the summons for judgment was taken out by the plaintiffs praying therein that the judgment be entered into for the plaintiffs in the suit against the defendants for Rs.6,00,000/- with interest thereon at the rate of 12% p.a. from the date of the suit until realisation. An Affidavit in opposition to the summons for judgment was filed by the defendants. That the defendants were given leave to defend unconditionally is not in dispute. Despite the grant of leave unconditionally, the defendants did not file any Written Statement for many years. Even when the Written Statement was ready on 3rd December, 2003, the Written Statement was not filed in the Court. For want of Written Statement, the matter was posted before the learned trial Judge on 16th June, 2006. It appears from the impugned judgment that on behalf of the defendants, the Written Statement was tendered and oral prayer for the condonation of delay in filing the Written Statement was made. However, the learned trial Judge was of the view that oral request for condonation of delay cannot be considered. He consequently decreed the plaintiffs' suit for want of Written Statement.

4. The impugned judgment reads thus:

> "Heard learned counsel for the plaintiff and defendant. Learned counsel for the defendant orally prays for condonation of the delay for filing of the written statement. As held by the Supreme Court in Kailash Versus Nanhku reported in 2005 (2) Mh.L.J. 225, an oral request for condonation of delay and taking the written statement on record cannot be considered. Hence, oral request for condonation of delay is rejected.
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> 2. The suit is for recovery of the money. The defendant has not filed written statement for nearly 20 years. Hence, suit of the plaintiff is decreed under Order 8 Rule 10 of the Code of Civil Procedure in terms of prayer clauses (a) and (b)."

5. We are afraid, by no stretch of imagination, the impugned judgment can be said to meet the requirement of a judgment as contemplated under Section 2(9) and Order XX, Rule 4(2) of the Code of Civil Procedure. The impugned judgment even does not reflect that the evidence by way of Affidavit or the documents were tendered by the plaintiffs to prove their case. There is no consideration of the matter at all by the learned Trial Judge. After all this was a case where, upon the contest of the summons for judgment, the defendants were granted unconditional leave to defend.

6. In **Balraj Taneja Vs. Sunil Madan, AIR 1999**

S.C. 3381, the Supreme Court considered the provisions of Order VIII, Rule 10 of the Code of Civil Procedure and held that before passing a judgment against the defendants, it must seen to it that even if the facts set out in the plaint are treated to have been admitted, the judgment could possibly be passed recording the Court's satisfaction. The Supreme Court also referred to the provisions contained in Order XX Rule 4(2) and Section 2(9) of the Code of Civil Procedure and held that the judgment should be self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. Whether it is a case which is contested by the defendants by filing a Written Statement, or a case which proceeds exparte and is ultimately decided as an exparte case, or is a case in which the Written Statement is not filed and the case is decided under Order VIII Rule 10, the Court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved. The impugned judgment does not meet the requirement of law, particularly Section 2(9) and Order XX, Rule 4(2) of the

Code of Civil Procedure.

7. The counsel for the respondents insisted that there being no application in writing explaining the delay in filing the Written Statement, if the Court is inclined to set aside the impugned judgment and order, the defendants must be asked to make proper application seeking condonation of delay in filing the Written Statement.

8. In **M/s. Mediatronics Corporation of India & Ors. Vs. Dr. Mrs. Salima A. Rais (Appeal No.598 of 2006 in Suit No.1726 of 1992)** decided by us on August 22, 2006, we observed that though the defendants were negligent in not filing Written Statement for many years despite reasonable opportunity having been granted to them, but since the impugned judgment does not meet the requirement of law, one opportunity may be given to the defendants for filing Written Statement so that the case could be decided on merits. In the present case, the senior counsel for the defendants showed us the Written Statement that was affirmed on 3rd December, 2003. Upon perusal thereof, no doubt is left that the Written Statement was ready on 3rd December, 2003. Obviously,

when the Written Statement was not filed despite it being ready for almost two and half years, the reason must have been inadvertence and/or negligence of the Advocates for the defendants for which surely the defendants must not be penalised. Insofar as inconvenience to the plaintiffs is concerned, we are of the view that award of reasonable cost would meet the ends of justice.

9. We, accordingly, dispose of this Appeal by the following order:

(i) The judgment and decree dated 16th June, 2006 is quashed and set aside subject to the defendants paying cost of Rs.25,000/- to the plaintiffs within two weeks from today.

(ii) The defendants are permitted to file Written Statement also within the aforestated time.

(iii) If the cost is not paid within the aforestated time, the liberty granted to the

defendants in filing Written Statement shall stand recalled and the impugned judgment dated 16th June, 2006 would stand revived.

(iv) Since the Suit is of the year 1986, if the Written Statement is filed and cost is paid by the defendants to the plaintiffs, we request the learned trial Judge to hear and decide the Suit expeditiously.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]